

By: Workman

H.B. No. 328

A BILL TO BE ENTITLED

AN ACT

relating to state and federal laws regarding immigrants or immigration, including the enforcement of those laws by certain governmental entities and the use of consular identity documents for certain purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 101, Civil Practice and Remedies Code, is amended by adding Section 101.0216 to read as follows:

Sec. 101.0216. LIABILITY OF LOCAL GOVERNMENT FOR FAILURE TO ENFORCE FEDERAL IMMIGRATION LAWS. (a) In this section:

(1) "Lawful detention" has the meaning assigned by Section 364.001, Local Government Code.

(2) "Local government" means a municipality, county, or special district or authority.

(b) Notwithstanding Section 101.051, this section applies to a junior college district, and this chapter applies to a junior college district with respect to this section.

(c) This section does not apply to an entity to which Chapter 364, Local Government Code, does not apply.

(d) Except as provided by this subsection, if a local government fails to assist or cooperate with a federal immigration officer, as reasonable and necessary to enforce federal immigration laws with respect to an individual who is under a lawful detention

1 or under arrest, and who is then released by the local government,
2 the local government is liable for damages arising from the
3 individual's actions following release. This section does not
4 create liability for damages sustained by the individual following
5 release.

6 SECTION 2. Chapter 2, Code of Criminal Procedure, is
7 amended by adding Articles 2.251 and 2.252 to read as follows:

8 Art. 2.251. DUTIES RELATED TO ARRESTED PERSON. (a) Not
9 later than 48 hours after a person is arrested and before the person
10 is released on bond, a law enforcement agency performing the
11 booking process shall:

12 (1) review any information available under the federal
13 Priority Enforcement Program operated by United States Immigration
14 and Customs Enforcement or a successor program; or

15 (2) request information regarding the person's
16 immigration status from:

17 (A) a peace officer or other law enforcement
18 officer of this state who is authorized under federal law to verify
19 a person's immigration status; or

20 (B) a federal immigration officer, in accordance
21 with 8 U.S.C. Section 1373(c).

22 (b) A law enforcement agency is not required to perform the
23 duties imposed by Subsection (a) with respect to a person who is
24 transferred to the custody of the agency by another law enforcement
25 agency if the transferring agency performed those duties before
26 transferring custody of the person.

27 Art. 2.252. DUTIES RELATED TO IMMIGRATION DETAINER. A law

enforcement agency that has custody of a person subject to an immigration detainer issued by United States Immigration and Customs Enforcement shall:

(1) provide to the judge or magistrate authorized to grant or deny the person's release on bail under Chapter 17 notice that the person is subject to an immigration detainer; and

(2) detain the person as required by the immigration detainer.

SECTION 3. Subchapter B, Chapter 402, Government Code, is amended by adding Section 402.034 to read as follows:

Sec. 402.034. GOVERNMENTAL ENTITY VIOLATORS DATABASE: IMMIGRATION RELATED LAWS. (a) In this section:

(1) "Governmental entity" has the meaning assigned by Section 2057.001.

(2) "Immigration laws" and "local entity" have the meanings assigned by Section 364.001, Local Government Code.

(b) The attorney general shall establish and maintain a computerized database containing information with respect to:

(1) each local entity for which a final judicial determination in an action brought under Section 364.005, Local Government Code, is made that the entity has intentionally prohibited the enforcement of immigration laws; and

(2) each governmental entity for which a determination by the attorney general under Section 2057.004 is made that the entity has accepted, recognized, or relied on a consular identity document in violation of Chapter 2057.

(c) The attorney general shall make the database accessible

1 to the public on the attorney general's Internet website.

2 (d) The attorney general shall adopt rules as necessary to
3 administer this section.

4 SECTION 4. Subtitle B, Title 10, Government Code, is
5 amended by adding Chapter 2057 to read as follows:

6 CHAPTER 2057. RECOGNITION OF CONSULAR IDENTITY DOCUMENTS

7 Sec. 2057.001. DEFINITION. In this chapter, "governmental
8 entity" means:

9 (1) a board, commission, department, or other agency
10 of this state, including an institution of higher education as
11 defined by Section 61.003, Education Code; and

12 (2) a political subdivision of this state.

13 Sec. 2057.002. GOVERNMENTAL RECOGNITION OF CONSULAR
14 IDENTITY DOCUMENT OF APPLICANT FOR PUBLIC BENEFIT OR SERVICE. In
15 the provision by a governmental entity of a state or local public
16 benefit or service that requires the applicant for or recipient of
17 the public benefit or service to verify the applicant's or
18 recipient's identity, the governmental entity may not accept,
19 recognize, or rely on an identity document issued to the applicant
20 or recipient by a consular office or consular official of another
21 country, including a matricula consular issued by a consular office
22 of the United Mexican States located in this country, as primary,
23 secondary, or supporting evidence of the applicant's or recipient's
24 identity.

25 Sec. 2057.003. GOVERNMENTAL RECOGNITION OF CONSULAR
26 IDENTITY DOCUMENT OF APPLICANT FOR PUBLIC EMPLOYMENT. A
27 governmental entity may not accept, recognize, or rely on an

identity document issued to the applicant by a consular office or consular official of another country, including a matricula consular issued by a consular office of the United Mexican States located in this country, as primary, secondary, or supporting evidence of the identity of an applicant for employment by the governmental entity.

Sec. 2057.004. CITIZEN COMPLAINT; ATTORNEY GENERAL DETERMINATION. (a) Subject to Subsection (b), any citizen of this state may file a complaint with the attorney general if the citizen offers evidence to support an allegation that a governmental entity has accepted, recognized, or relied on a consular identity document in violation of this chapter. The citizen must include with the complaint the evidence the citizen has that supports the complaint.

(b) If the complaint alleges that a political subdivision of this state accepted, recognized, or relied on a consular identity document in violation of this chapter, the citizen must reside in the jurisdiction of the political subdivision.

(c) The attorney general shall determine whether a complaint filed under this section is valid.

(d) If the attorney general determines that a complaint is valid, the attorney general shall, not later than the 10th day after the date of the determination, provide written notification to the entity that:

(1) the complaint has been filed;
(2) the attorney general has determined that the complaint is valid; and

(3) information with respect to the determination has

1 been included on the governmental entity violators database
2 maintained by the attorney general as provided by Section 402.034.

3 SECTION 5. Subtitle C, Title 11, Local Government Code, is
4 amended by adding Chapter 364 to read as follows:

5 CHAPTER 364. ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS

6 Sec. 364.001. DEFINITIONS. In this chapter:

7 (1) "Immigration laws" means the laws of this state or
8 federal law relating to immigrants or immigration, including the
9 federal Immigration and Nationality Act (8 U.S.C. Section 1101 et
10 seq.).

11 (2) "Lawful detention" means the detention of an
12 individual by a local entity for the investigation of a criminal
13 offense. The term excludes a detention if the sole reason for the
14 detention is that the individual:

15 (A) is a victim of or witness to a criminal
16 offense; or

17 (B) is reporting a criminal offense.

18 (3) "Local entity" means:

19 (A) the governing body of a municipality, county,
20 or special district or authority, subject to Sections 364.002(a)
21 and (b);

22 (B) an officer, employee, or other body that is
23 part of a municipality, county, or special district or authority,
24 including a sheriff, municipal police department, municipal
25 attorney, or county attorney; or

26 (C) a district attorney or criminal district
27 attorney.

1 Sec. 364.002. APPLICABILITY. (a) This chapter does not
2 apply to a school district or open-enrollment charter school. This
3 chapter does not apply to the release of information contained in
4 education records of an educational agency or institution, except
5 in conformity with the Family Educational Rights and Privacy Act of
6 1974 (20 U.S.C. Section 1232g).

7 (b) This chapter does not apply to a hospital or hospital
8 district created under Subtitle C or D, Title 4, Health and Safety
9 Code, or a hospital district created under a general or special law
10 authorized by Article IX, Texas Constitution, to the extent that
11 the hospital or hospital district is providing access to or
12 delivering medical or health care services as required under the
13 following applicable federal or state laws:

- 14 (1) 42 U.S.C. Section 1395dd;
15 (2) 42 U.S.C. Section 1396b(v);
16 (3) Subchapter C, Chapter 61, Health and Safety Code;
17 (4) Chapter 81, Health and Safety Code; and
18 (5) Section 311.022, Health and Safety Code.

19 (c) Subsection (b) does not exclude the application of this
20 chapter to a commissioned peace officer employed by or commissioned
21 by a hospital or hospital district subject to Subsection (b).

22 Sec. 364.003. LOCAL GOVERNMENT POLICY REGARDING
23 IMMIGRATION ENFORCEMENT. (a) A local entity shall not adopt a
24 rule, order, ordinance, or policy under which the entity prohibits
25 the enforcement of immigration laws.

26 (b) A local entity shall inquire into the immigration status
27 of a person under a lawful detention.

1 (c) In compliance with this section, a local entity shall
2 not prohibit a person who is a commissioned peace officer described
3 by Article 2.12, Code of Criminal Procedure, a corrections officer,
4 a booking clerk, a magistrate, or a district attorney, criminal
5 district attorney, or other prosecuting attorney and who is
6 employed by or otherwise under the direction or control of the
7 entity from doing any of the following:

8 (1) inquiring into the immigration status of a person
9 under a lawful detention or under arrest;

10 (2) with respect to information relating to the
11 immigration status, lawful or unlawful, of any person under a
12 lawful detention or under arrest:

13 (A) sending the information to or requesting or
14 receiving the information from United States Citizenship and
15 Immigration Services or United States Immigration and Customs
16 Enforcement, including information regarding a person's place of
17 birth;

18 (B) maintaining the information; or

19 (C) exchanging the information with another
20 local entity or a federal or state governmental entity;

21 (3) assisting or cooperating with a federal
22 immigration officer as reasonable and necessary, including
23 providing enforcement assistance; or

24 (4) permitting a federal immigration officer to enter
25 and conduct enforcement activities at a municipal or county jail to
26 enforce federal immigration laws.

27 Sec. 364.004. CONSIDERATION OF CERTAIN CHARACTERISTICS

1 PROHIBITED. A local entity or a person employed by or otherwise
2 under the direction or control of the entity may not consider race,
3 color, language, or national origin while enforcing immigration
4 laws except to the extent permitted by the United States
5 Constitution or Texas Constitution.

6 Sec. 364.005. CITIZEN COMPLAINT; EQUITABLE RELIEF. (a)
7 Any citizen residing in the jurisdiction of a local entity may file
8 a complaint with the attorney general if the citizen offers
9 evidence to support an allegation that the entity has adopted a
10 rule, order, ordinance, or policy under which the entity prohibits
11 the enforcement of immigration laws or that the entity, by
12 consistent actions, prohibits the enforcement of immigration laws.
13 The citizen must include with the complaint the evidence the
14 citizen has that supports the complaint.

15 (b) If the attorney general determines that a complaint
16 filed under Subsection (a) against a local entity is valid, the
17 attorney general shall, not later than the 10th day after the date
18 of the determination, provide written notification to the entity
19 that:

20 (1) the complaint has been filed;

21 (2) the attorney general has determined that the
22 complaint is valid;

23 (3) the attorney general is authorized to file an
24 action to enjoin the violation if the entity does not come into
25 compliance with the requirements of Section 364.003 on or before
26 the 90th day after the date the notification is provided; and

27 (4) the entity will be denied state funds for the state

1 fiscal year following the year in which a final judicial
2 determination in an action brought under Subsection (c) is made.

3 (c) If the attorney general determines that a complaint
4 filed under Subsection (a) against a local entity is valid, the
5 attorney general may file a petition for a writ of mandamus or apply
6 for other appropriate equitable relief in a district court in
7 Travis County or in a county in which the principal office of the
8 entity is located to compel the entity that adopts a rule, order,
9 ordinance, or policy under which the local entity prohibits the
10 enforcement of immigration laws or that, by consistent actions,
11 prohibits the enforcement of immigration laws to comply with
12 Section 364.003. The attorney general may recover reasonable
13 expenses incurred in obtaining relief under this subsection,
14 including court costs, reasonable attorney's fees, investigative
15 costs, witness fees, and deposition costs.

16 (d) An appeal of a suit brought under Subsection (c) is
17 governed by the procedures for accelerated appeals in civil cases
18 under the Texas Rules of Appellate Procedure. The appellate court
19 shall render its final order or judgment with the least possible
20 delay.

21 Sec. 364.006. REMITTANCE OF STATE HEALTH AND EDUCATION
22 COSTS. (a) If a final judicial determination under Section 364.005
23 is made that a local entity intentionally prohibited the
24 enforcement of immigration laws, the attorney general shall provide
25 written notice to the Legislative Budget Board of the violation.

26 (b) On receipt of the notice, the Legislative Budget Board
27 shall:

1 (1) determine any health and education costs incurred
2 by the state because of the violation; and

3 (2) provide a written report of those costs to the
4 attorney general, the comptroller, and the local entity.

5 (c) The local entity shall remit to the comptroller the
6 amount reported under Subsection (b), and the comptroller shall
7 deposit the remitted amount in the general revenue fund. If the
8 local entity is a part of another local entity, that other entity
9 may remit the amount on behalf of the local entity.

10 Sec. 364.007. DENIAL OF STATE FUNDS. (a) A local entity
11 may not receive state funds if the entity adopts a rule, order,
12 ordinance, or policy under which the entity prohibits the
13 enforcement of immigration laws or, by consistent actions,
14 prohibits the enforcement of immigration laws.

15 (b) State funds for a local entity shall be denied for the
16 state fiscal year following the year in which a final judicial
17 determination in an action brought under Section 364.005 is made
18 that the entity has intentionally prohibited the enforcement of
19 immigration laws.

20 (c) The comptroller shall adopt rules to implement this
21 section uniformly among the state agencies from which state funds
22 are distributed to a municipality or county.

23 (d) A local entity that has not violated Section 364.003 may
24 not be denied state funds, regardless of whether the entity is a
25 part of another entity that is in violation of that section.

26 Sec. 364.008. LAW ENFORCEMENT OFFICIAL INDEMNIFICATION.
27 Unless the law enforcement official was acting in bad faith, a local

1 entity shall indemnify a law enforcement official of the entity for
2 reasonable expenses and costs, including attorney's fees, incurred
3 by the official in connection with a claim asserted against the
4 official because of the official's compliance with this chapter.

5 SECTION 6. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2017.